SUPREME COURT, U. S.

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No. 71-248

In the Supreme Court of the United States

OCTOBER TERM, 1971

LEO JOSEPH SAITTA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted of transporting and conspiring to transport a stolen vehicle in interstate commerce, in violation of 18 U.S.C. 2312 and 18 U.S.C. 371. He was sentenced to a total of six years' imprisonment. The court of appeals affirmed (Pet. App.).

The material facts are not in dispute. In the spring of 1967 co-defendant Volpe, the government's main witness at trial, agreed to purchase a new Cadillac

from petitioner. Later, petitioner notified Volpe that a 1967 Cadillac had been obtained for him. He showed Volpe an unsigned bill of sale and an Alabama registration for the car. Petitioner signed the bill of sale and had it notarized, using a fictitious name, and, on the basis of the bill of sale and Alabama registration, a Florida registration was obtained in Volpe's name. The car was in New York, and Volpe accompanied petitioner to pick it up. The two men drove the car to Florida and Volpe paid petitioner for it. During the return trip, petitioner was stopped by police near Ocala, Florida, for speeding, and was issued a speeding complaint, which he signed. In April 1968, the Cadillac was impounded after a police inspection showed that it had been stolen in New York on November 25, 1967. (Tr. 21-27, 29-33, 36-53, 68-103, 124-126, 137-142.)[1]

In November 1969, pursuant to a defense motion, the trial judge ordered the government to deliver up "results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case * * * within the possession, custody or control of the Government" (A. 17).[2] The order specified that the items "shall be furnished within 15 days after the receipt by the United States Attorney but in no event * * * later than the day of trial" (*ibid.*).

The government had submitted the traffic ticket

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[1] "Tr." refers to the trial court transcript, a copy of which we are lodging with the clerk of this Court.

[2] "A." refers to the Appendix in the court of appeals.

that petitioner had signed to a handwriting expert, whose report, indicating that the signature on the ticket was petitioner's, had been received in August 1969. That report was not furnished to defense counsel immediately following the court's order. On September 9, 1970, the government notified counsel of the report's conclusion that petitioner had signed the ticket. Counsel requested a copy of the report, which the government provided on September 22, 1970.

The trial commenced as scheduled the following day, September 23, 1970. Counsel requested a continuance on the ground that the government's failure to supply the report earlier, as required by the discovery order, had prevented his obtaining a defense handwriting expert to show, in support of petitioner's claim that he had not travelled in the car with Volpe, that the signature was not petitioner's. The judge denied the motion. At trial, the defense conceded that in fact petitioner had travelled with Volpe (Tr. 201-202), and relied on an entirely different theory, that petitioner, while he did help drive the car, thought it belonged to Volpe and did not know it was stolen (see Tr. 208-209, 297-299).

Petitioner contends here, as he did in the court of appeals, that the trial judge committed reversible error in denying his request for a continuance. The court below correctly held that there was no reversible error on this matter, since the denial did not prejudice the defense. In view of the fact that petitioner did actually sign the ticket, as the government's expert concluded and the defense conceded at

trial, counsel could not reasonably have expected to find another expert to testify to the contrary. Indeed, although counsel knew of the report and its conclusion not later than when he received the government's letter of September 9, he did not move for a continuance until the day for trial, some two weeks later, on September 23. Moreover, there is no indication that counsel objected to not having received the report or claimed that his trial preparation was hindered thereby when the trial judge conducted a conference regarding the status of the case on September 16, 1970. In these circumstances, any error by reason of the government's failure to supply the report earlier or the trial judge's denial of a continuance was harmless.

It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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